

REMARKS

In the Final Office action mailed on September 20, 2005, the Examiner considered claims 1-4 and 6-8. Claims 1, 2, and 6 were rejected under 35 U.S.C. § 102 and claims 1-4 and 6-8 were rejected under 35 U.S.C. § 103.

Applicants respectfully submit the attached Amendment, in which claim 1 has been amended to include all of the limitations of claim 7, and claim 7 has been cancelled. Applicants respectfully submit that no new matter is introduced by the present Amendment.

In view of the amendments to the claims together with the following remarks, Applicants respectfully request reconsideration and withdrawal of all grounds of rejection.

Rejection of claims 1, 2 and 6 under 35 U.S.C. § 102

Claims 1, 2 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by JP 11-130141A issued to Toyo Aluminum (hereinafter "Toyo"). In view of the amendment to claim 1, Applicants respectfully request reconsideration and withdrawal of this rejection.

For a claim to be anticipated under 35 U.S.C. § 102(b), the cited reference must teach or suggest each and every limitation in the claim. Applicants respectfully submit that Toyo does not disclose every element of Applicants' amended claim 1.

Applicants' independent claim 1 recites a foil for food packagings. Applicants' claimed foil includes a first layer of an aluminum material, at least a second layer of an aluminum material, and at least one extrusion-lamination layer of a tear-resistant polymer, wherein at least the second layer of aluminum material comprises an aluminum foil. In addition, Applicants' claim 1 includes at least one adhesion promoter layer co-extruded with the layer of tear-resistant polymer between one of the layers of aluminum material and the layer of tear-resistant polymer. Applicants respectfully submit that Toyo does not teach or suggest Applicants' claimed adhesion promoter layer that is co-extruded with a layer of tear-resistant polymer.

Toyo discloses a foil consisting of an outer aluminum foil (11) and an inner aluminum foil (12), wherein an intermediate resin layer (13) is provided between the two aluminum foils. See, for example, Abstract including Figure in Toyo. In contrast to Applicants' claimed foil, Toyo's disclosure is silent as to an adhesion promoting layer, especially an adhesion promoting

layer co-extruded with a tear-resistant polymer between one of the layers of the aluminum material and the layer of tear-resistant polymer. See, for example Abstract Figure, which shows no adhesion promoting layer disposed between an aluminum foil layer (11 or 12) and a tear-resistant polymer layer. Because Toyo fails to teach or suggest a foil for food packagings that includes an adhesion promoting layer, Applicants respectfully submit that Toyo fails to teach every element of Applicants' independent claim 1. Accordingly, Applicants believe that that claim 1 is patentable.

Claims 2 and 6 depend from independent claim 1 and are patentable over Toyo at least for the same reasons claim 1 is patentable.

Rejection of claims 1-4 and 6-8 under 35 U.S.C. § 103

Claims 1-4 and 6-8 stand rejected under 35 U.S.C. c 103(a) as being unpatentable over U.S. Patent No. 4,172,914 to Festag et al. (hereinafter "Festag") in view of U.S. Patent No. 3,888,224 to Okuhara et al. (hereinafter "Okuhara"). In view of the amendment to claim 1, Applicants respectfully request reconsideration and withdrawal of these rejections.¹

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all of the claim limitations. M.P.E.P. 706.02(j). In the present case, the cited prior art references fail to support a *prima facie* case of obviousness because (A) there is no motivation to combine the references and (B) even if improperly combined the references fail to teach or suggest all of the elements of Applicants' independent claim 1.

A. There is no motivation to combine the teachings of Festag and Okuhara

Applicants submit that there is no motivation to combine Festag and Okuhara because the references teach away from their combination. See, MPEP § 2145, which states that "[i]t is improper to combine references where the references teach away from their combination."

¹ Claim 7 has been cancelled in the attached Amendment. As a result, the 35 U.S.C. § 103 of claim 7 is now moot.

The Examiner on page 4 of the Office Action has stated that Festag does not teach Applicants' claimed foil, which includes a second layer of aluminum material. However, the Examiner has asserted that it would be obvious to apply Okuhara's metal foil, which is applied to an interior of a container onto the laminate foil taught by Festag. Applicants respectfully disagree with Examiner's proposed modification.

Festag discloses a process for the manufacture of an aluminum/plastic laminate. See, Abstract in Festag. According to one of the objects of Festag's invention, the laminate foil includes a plastic foil that is able to bear a greater load than the included aluminum foil so that the laminate foil achieves a 40-120% elongation in a tensile test without tearing or forming macropores. To accomplish this objective the aluminum foil is covered on at least one side (preferably both sides) with plastic foil. See, for example, col. 2, lines 5 – 48 in Festag. While, Festag discloses that only one side of the aluminum foil needs to be covered by plastic foil, the objects of Festag's invention certainly could not be achieved by including two aluminum foils surrounding merely one plastic foil. Specifically, Festag requires that the load bearing capacity of the plastic foil over the desired change in length must be greater than the load bearing capacity of the aluminum foil. See, col. 2, lines 20-29. The preferred embodiment, according to Festag is when both sides of the aluminum foil are covered by plastic foil. See, col. 3, lines 26-27. As a result, while Festag's disclosure encompasses a laminate that includes a single piece of aluminum foil covered on one or both sides with plastic foil, Festag's disclosure certain does not teach including two aluminum foils. In fact, including two aluminum foils with only a single polymer film therebetween would not achieve Festag's disclosed objectives. Thus, Applicants respectfully submit that the modification proposed by the Examiner (i.e., adding a second layer of aluminum foil to Festag's laminate) would prevent the accomplishment of Festag's disclosed objectives and thus Festag teaches away from the proposed combination.

Turning to Okuhara, Okuhara discloses lining the interior of a container with a metallic material. See, for example, Okuhara's Abstract. According to Okuhara's disclosure, the metallic material is disposed or adhered to a previously formed container. See, for example, Examples 11-18 in Okuhara. Okuhara's disclosure is silent with respect to applying a metal layer to a foil or other type of laminate material prior to making packaging or a container. As such, Applicants respectfully submit that Okuhara fails to provide any suggestion therein for

combination with Festag, especially in light of Festag's teaching away of the proposed combination. Accordingly, Applicants respectfully submit that the combination of Festag in Okuhara is improper and should be withdrawn.

B. The combined disclosures of Festag and Okuhara fail to teach every element of Applicants' independent claim

Applicants respectfully submit that even if the combination of Festag and Okuhara is proper, the Examiner has still failed to make a *prima facie* case against claim 1, because the combination fails to teach or suggest every element of Applicants' independent claim. Specifically, Applicants' claim 1 requires the co-extrusion of the adhesion promoting layer and the layer of tear-resistant polymer. Applicants respectfully submit that co-extrusion of these two layers leads to a bond of much higher quality and strength than in the case when the layers are merely laminated without co-extrusion. The high quality, high strength bond comes from the adhesive promoting material penetrating into the pores of the tear-resistant polymer during co-extrusion.

Applicants respectfully submit that neither Festag nor Okuhara teaches or suggests a foil that includes an adhesion promoter layer which is co-extruded with a layer of tear-resistant polymer to form the high quality, high strength bond. Specifically, Festag merely discloses the lamination of a polymer foil and adhesive layer (see, col. 4, lines 10-18 in Festag) and Okuhara fails to even teach or suggest the presence of an adhesion promoter layer.

Since neither Festag nor Okuhara, alone or in combination, teaches or suggests all of the elements of Applicants' independent claim 1, Applicants respectfully submit that claim 1 is patentable over the cited references. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the 35 U.S.C. § 103 rejection against claim 1.

Claims 2-4, 6 and 8 depend directly or indirectly from claim 1. Applicants submit that claims 2-4, 6 and 8 are patentable in view of the cited references for at least the same reasons claim 1 is patentable. Thus, Applicants also request that the Examiner withdraw the 35 U.S.C. § 103 rejections against claims 2-4, 6, and 8.

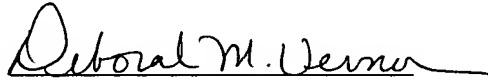
CONCLUSION

In view of the foregoing, Applicants respectfully submit that the claims 1-4, 6 and 8 are in condition for allowance and request favorable action. The Examiner is welcome to contact Applicants' attorney at the number below with any questions.

Respectfully submitted,

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Date

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